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Order 2002-3-28



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 29th day of March, 2002

**Travelocity.com, L.P.**

**Violations of 49 U.S.C. § 41712  
and 14 CFR 399.84**

**Served March 29, 2002**

**CONSENT ORDER**

This consent order concerns the failure of Travelocity.com, an Internet travel vendor, to include fuel surcharges, where applicable, in all airfare quotes on its website. The order also addresses the vendor's failure to disclose properly certain government-imposed taxes and fees on its site. These omissions violated the full-price advertising requirements of section 399.84 of the Department's rules (14 CFR 399.84) and constituted, moreover, an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. By this order, the Department directs Travelocity.com to cease and desist from future similar violations and to pay a compromise civil penalty.

Under 14 CFR 399.84, fare advertisements by air carriers or their agents must state the full price charged the consumer. A primary intent of the rule is to ensure that consumers are given accurate and complete fare information on which to base their airline travel plans. As we have indicated in prior consent orders, these requirements apply to advertisements on Internet sites.<sup>1</sup> In recent enforcement case precedent, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility

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<sup>1</sup> See, e.g.: Northwest Airlines Violations of 49 U.S.C. 41712 and 14 CFR 399.84, Order 99-8-23; Delta Air Lines, Order 97-7-24; American Express Travel Related Services Company, Inc., Order 96-11-19. See also, Notice of the Office of Aviation Enforcement and Proceedings, "Prohibition of Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," <http://www.dot.gov/airconsumer/20010118.htm>, January 18, 2001.

charges (PFCs) and departure taxes, to be stated separately in fare advertisements so long as the charges are levied or approved by a government entity, are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid. However, any fuel surcharges, as well as *ad valorem* taxes or any additional carrier or agent fees <sup>2</sup> must be included in the advertised fare.

On Travelocity.com's website, the principal compliance issue occurred on a flexible-date search feature, known as the "Best Fare Finder," in which the inquirer did not specify travel dates but merely requested the lowest fares in a city-pair market. The flexible search path produced a fare display in which a fuel surcharge was mentioned at the bottom of the display together with other applicable charges. The footnote stated that a fuel surcharge might apply, but the consumer could not determine whether it in fact did apply to a particular purchase until he or she went to the booking page.

A second compliance issue with respect to the flexible date search arose from the handling of government-imposed taxes and fees. These taxes and fees were neither included in the fares displayed on the initial fare display, nor were their amounts listed on the same page as the fares or on a page readily accessible to the consumer through a direct link. The booking page, however, which the prospective purchaser reached after selecting specific flights, did include the fuel surcharge and government-imposed fees in the fare displayed, so that the consumer could not actually book a flight without seeing the full fare. Nevertheless, the initial screen viewed by consumers, from which they would likely make their selection of carriers and flights, was deceptive and in violation of the Department's rules.<sup>3</sup>

In mitigation, Travelocity.com states that it has brought its website into full compliance with section 399.84. Travelocity further states that its omission of

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<sup>2</sup> See, Order 2001-12-7, providing a limited exemption to Orbitz regarding Internet travel agent service fees and this restriction.

<sup>3</sup> A third discrepancy in Travelocity.com displays occurred in its treatment of a service fee which it imposed on tickets sold on Northwest Airlines. As a result of the airline's decision to cease paying commissions on sales made by internet vendors, Travelocity.com instituted its own service fee applicable to Northwest tickets only and chose to disclose the fee, in part, by a notation placed beside Northwest flight entries stating the consumer should add \$10 to the indicated fare. After being advised by the Enforcement Office of its belief that this display did not comply with the full fare advertising rule, Travelocity quickly amended its displays to include the fee in a total fare on the first screen displaying a Northwest fare. Neither the findings of this order nor the civil penalties it assesses reflect the brief period during which the adjunct fee was not included in Northwest fares.

fuel surcharges resulted from the manner in which air carriers made their fare filings with ATPCO. By filing fuel surcharges separately from their base fares as “fare rules,” carriers require CRSs, including that used by Travelocity, to collate the base fares with the appropriate fare rule in order to arrive at the full price. Drawing on fare data from ATPCO and several carrier websites, Travelocity on its “Best-Fare Finder” search path did not include the relevant fuel surcharges in their initial fare quotes. Travelocity points out that these omissions led to recent enforcement actions against air carriers in at least two instances.<sup>4</sup> Moreover, Travelocity asserts, as an indication of the extent of the nonconformity with Department rules, that a large proportion of “brick-and-mortar” travel agents routinely fails to inform prospective purchasers of fuel surcharges. It would be more effective, Travelocity suggests, for the Department to require that carriers file full fares with ATPCO in order to simplify the fare retrieval process for those selling air service to the public.

The vendor points out that technical difficulties prevented it from correcting the fuel surcharge and government taxes and fees discrepancies more promptly. Travelocity states that it implemented its technical solution on January 19, 2001, following the Department’s issuance of a Notice regarding deceptive practices in the Internet marketing of airfares. Despite these delays in amending its screen displays, Travelocity.com contends that the actual consumer harm, if any, was minimal. No consumer, Travelocity asserts, could purchase a ticket without first seeing the full fare, inclusive of any fuel surcharge that might apply.<sup>5</sup> In the typical consumer search, where dates were specified, the fuel surcharge was fully incorporated in the fare as required by Department rules. With respect to the “Best Fare Finder” search, the vendor states that a consumer with one mouse selection could learn the amount of the fuel surcharge. Further, Travelocity states that to the best of its knowledge it has received no consumer complaints regarding its method of displaying fuel surcharges. Travelocity states that it corrected all problems promptly upon being made aware of the discrepancies.

We consider any advertisements that do not comply with the full fare disclosure requirements to be a violation of both section 41712 and section 399.84, and, while we acknowledge that Travelocity has been fully cooperative in our investigation, we believe that enforcement action is warranted in this instance.<sup>6</sup>

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<sup>4</sup> See fn. 6, *infra*.

<sup>5</sup> The Enforcement Office accepts that it was not Travelocity’s intention to mislead consumers or to violate the specific requirements of section 399.84.

<sup>6</sup> The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings has recently settled several other cases involving fare presentations via the Internet and the full-fare advertising requirements and continues to investigate others. See, e.g. Order 2001-5-32 (US Airways); Order 2001-6-3 (Trip.com); Order 2001-8-1 (Northwest Airlines); Order 2001-9-3 (Lowestfare.com); and Order 2001-12-1 (Expedia).

Travelocity.com, for its part, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84 on its Internet site and to an assessment of \$50,000 in compromise of potential civil penalties. Of this total penalty amount, \$25,000 shall be paid within 30 days of the service date of this order. The remaining \$25,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Travelocity.com violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$50,000 penalty shall become due and payable immediately, and the vendor may be subject to further enforcement action. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future noncompliance with our advertising regulations and section 41712 by Travelocity.com, as well as by other sellers of air transportation.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest;
2. We find that Travelocity.com, L.P., violated 14 CFR 399.84 by advertising fares on its Internet site which failed properly to include applicable fuel surcharges and government-imposed taxes and fees, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Travelocity.com, L.P., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Travelocity.com, L.P., is ordered to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Travelocity.com, L.P., is assessed \$50,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of that penalty amount, \$25,000 shall be paid within 30 days of the service date of this order. The remaining \$25,000 shall be suspended for one year following service of this order, and then forgiven, unless Travelocity.com, L.P., violates this order's cease and desist provisions within the one-year suspension period, or fails to comply with the order's

payment provisions, in which case the entire unpaid portion of the \$50,000 penalty shall become due and payable immediately, and Travelocity.com, L.P., may be subject to further enforcement action; and

6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall also subject Travelocity.com, L.P., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

**ROSALIND A. KNAPP**  
Deputy General Counsel

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